



U.S. Department of Justice

Immigration and Naturalization Service

B9

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



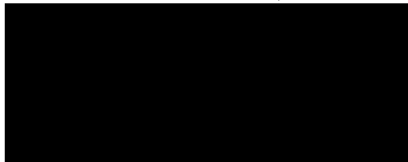
FILE: [REDACTED]
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Office: Vermont Service Center

Date:

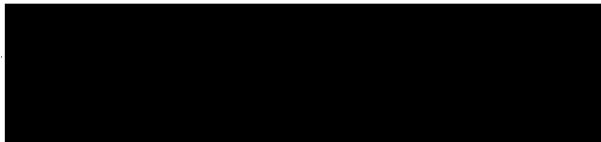
SEP 13 2000

IN RE: Petitioner:
Beneficiary:



APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying documents used to
prevent clearly unwarranted
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of England who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner was not knowledgeable of the Service's requirements for establishing cruelty and she now intends to seek the necessary counseling to establish the basis for the ground. He further asserts that the petitioner's isolation, which formed a part of the cruelty she suffered, accounts for the absence of testimonial and documentary corroboration. Counsel states that the petitioner will amplify her statement and provide statements by others who were at least aware of her husband's propensities, and that he needs 60 days in which to submit a brief and/or additional evidence.

Counsel also requests that the Service provide a copy of completed forms and other materials which comprise the Service file regarding the petitioner. On May 31, 2000, counsel was advised that his request for a copy of the petitioner's file under the Freedom of Information Act (FOIA) dated December 3, 1999 was received, and if the requested information is still desired, to contact the Service. He was given a name, address, and telephone and fax numbers of the person at the Service FOIA office to contact, and was advised that if no response is received by June 16, 2000, the request will be considered withdrawn. No additional evidence, however, has been received in the record of proceeding.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner entered the United States as a visitor on December 10, 1997. She married her United States citizen spouse on February 14, 1998 at Patterson, New Jersey. On October 23, 1998, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen during the marriage.

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

[T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence,

including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

(i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

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(iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

Because the petitioner furnished insufficient evidence to establish that she has met this requirement, she was requested on May 11, 1999, and again on July 20, 1999, to submit additional evidence to establish the claim of sexual abuse of her child. The director listed examples of evidence she may submit to establish extreme cruelty. He noted that in response, the petitioner stated that her daughter's counselling is confidential and her parents do not want

any of the past brought up because her daughter has adjusted to her life in England. The director further noted that the petitioner stated she has no evidence of violence towards her from her spouse because she did not go out of the house, and that the petitioner also stated she did not have any friends. Because the petitioner had not submitted any documentary evidence to support her allegations, the director determined that the record did not contain satisfactory evidence to demonstrate her qualification for the benefit sought and denied the petition.

While counsel on appeal states that he needs 60 days in which to submit supporting documentation, other evidence, and a brief to support the petition, no additional evidence has been provided. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.